IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 986 of 1987

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GRASIM INDUSTRIES LTD

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 986 of 1987
MR RC JANI for Petitioner No. 1-2
MR BP TANNA for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 25/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

By this petition under Article 226 of the Constitution, the petitioner-company has claimed an amount of refund of octroi paid on goods exported. without any change, after the import within the territorial jurisdiction of the respondent-Corporation and, for that, the reply of the Corporation dated 21.8.1986 is assailed, whereby the claim of the petitioner-company for refund of the octroi amount came to be rejected.

The petitioner-company is a duly registered company under the Companies Act, 1956, and is carrying on business of manufacturing, inter alia, viscose staple fibre and grasilene fibre, which are both man made fibres. The company has, inter alia, contended that the staple fibre division of the company has its factory at Nagda in Madhya Pradesh and a branch, at Ahmedabad, in Gujarat State. The Ahmedabad branch received from Nagda viscose staple fibre, etc., for the purpose of selling the same to purchasers in Ahmedabad and to purchasers in different parts of Gujarat.

It is, therefore, the case of the petitioning company that the Ahmedabad Branch received the goods within the limits of the Municipal Corporation of Ahmedabad, but part of the goods, namely, viscose taple fibre/grasilene fibre are not imported into the city for the purpose of use, consumption and sale within the city and, therefore, the said goods, which are so received at Ahmedabad Branch are not the goods which are octroable.

The respondent-Corporation is governed by the provisions of the Bombay Provincial Municipal Corporation Act, 1949 (Act), which has empowered under Section 127 of the Act to impose taxes including octroi for the purpose of the Act. The respondent-Corporation has framed rules regarding octroi in terms of the provisions of Section 457(7) read with Section 149(1) of the Act, known as "The Ahmedabad Municipal Corporation Octroi Rules (Rules). It is, therefore, the case of the petitioning company that when the goods are brought within the municipal limits of Ahmedabad city not with an intend to consume, use or sale within the city limit, the Corporation has no authority to levy any tax or octroi on the said goods. It is, in this context, the petitioner-company's case is that the rejection of an application for refund of octroi duty by a letter dated 21.8.1986 of the respondent-Corporation is unjust, unreasonable, illegal and contrary to the statutory provisions. Reliance is also placed on Annexure-E, which refers to Schedule-C as per Standing Order No.17(3) evidencing and showing the export

certificate.

Schedule-C also indicates, inter alia, the book number, the Naka and its number for the purpose of octroi, the import bill number with the date of deposit of the amount while importing the goods not meant for use, consumption or sale in Ahmedabad and other particulars referable to the goods imported. The petitioning company has, therefore, pleaded that the goods which were imported from Madhya Pradesh manufacturing site to the Division in Ahmedabad city and which were exported in terms of Annexure-E referred hereinabove, the amount which was deposited at the time of importing the said goods which came to be exported and which were not intended for sale, consumption or use in the city of Ahmedabad, ought to be refunded and rejection of the claim by aforesaid letter is required to be quashed and the respondent-authority is required to be directed to refund as claimed, and that too, more so, in absence of any affidavit-in-reply countering the claims and pleas raised in the petition.

After hearing the learned advocates of parties and considering the peculiar facts and special circumstances of this petition, following directions are issued so as to dispose it of finally:-

(1) That the respondent-authority is directed to verify the claim made in respect of refund of octroi in light of the export certificates and, on being satisfied about the fulfilment of the requirements of Rule 12 of the Ahmedabad Municipal Corporation Octroi Rules, shall decide the claim of refund within a period of two months from the date of receipt of the order and, if the petitioner-company is found entitled to refund, shall make payment thereof.

Rule is made absolute, accordingly, without any order as to costs.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

gt